

Received & Filed  
LEWIS COUNTY, WASH  
Superior Court

DEC 14 2020

Lewis County Clerk

BEFORE THE SUPERIOR COURT OF LEWIS COUNTY

JUDI COSTELLO

Petitioner,

vs.

MAYOR JOE SCHEY,  
CITY OF VADER

City

Case No.: **20 2 0076321**

LAND USE PETITION - COMPLAINT

RCW 36.70C

**I. INTRODUCTION**

This COMPLAINT is filed under authority of the LAND USE PETITION ACT (RCW 36.70C) governing judicial review of land use decisions. This petition pertains to a Stop Work Order dated September 24, 2020 issued by the City of Vader ("City") against the Petitioner, Judi Costello. The Petitioner appealed the Stop Work Order on October 1, 2020. On November 1, 2020, during the pendency of the appeal, the City filed a subsequent action against the Petitioner for the same subject matter. The Stop Work Order was heard by the City of Vader Hearing Examiner, Mark Scheibmeir ("Hearing Examiner") on November 23, 2020. The Hearing Examiner's decision was dated November 23, 2020 and mailed to the Petitioner on November 24, 2020. A Request for Reconsideration was filed by the Petitioner on December 2, 2020. The Hearing Examiner's denied the Request for Reconsideration on December 3, 2020.

**II. IDENTIFICATION OF THE PARTIES**

1. Name and mailing address of the Petitioner:

Judi Costello  
P.O. Box 41  
Vader, Washington 98593

2. Name and mailing address of the Petitioner's attorney:

Tonya M. Hebert, WSBA #51659  
411 NE First Street, P.O. Box 69  
Winlock, Washington 98596

3. Name and mailing address of local jurisdiction:

City of Vader  
Joe Schey, Mayor  
P.O. Box 189  
317 8<sup>th</sup> Street  
Vader, Washington 98593

4. Decision Making Body/Officer:

City of Vader Hearing Examiner, Mr. Mark Scheibmeir ("Hearing Examiner")  
299 N.W. Center Street, P.O. Box 939  
Chehalis, WA 98532

**III. STANDING**

The Petitioner has Standing under RCW 36.70C.060(1) because she is the landowner of the Property to which the land use decision is directed. The Petitioner has exhausted all available administrative remedies. A judgment in favor of the Petitioner would substantially eliminate the prejudice caused by this land use decision.

**IV. STATEMENT OF FACTS**

1. The Petitioner applied for a re roofing permit through the City on June 2, 2020.
2. At the time of the permit application, the City demanded an unlawful permit fee amount of \$386.50 from the Petitioner.

- 1 3. The City issued Permit VAD 20-13 ("Permit") on June 29, 2020 for the City's correct roofing  
2 fee of \$86.50.
- 3 4. The Permit was issued on a revised roofing permit form used only for the Petitioner's Permit.
- 4 5. During the re roofing work, a Stop Work Order was posted on the property on September 17,  
5 2020 identifying two alleged violations. Work on the property immediately stopped. The Stop  
6 Work Order ("Order-1") was posted but not served on the Petitioner.
- 7 6. The City was required to post Order-1 and serve the person engaged in doing the work. VMC  
8 19.01.060(a).
- 9 7. The Petitioner responded in writing and received no return response.
- 10 8. A second Stop Work Order (Order-2) for the same subject matter was issued by the City on  
11 September 21, 2020. The Petitioner immediately stopped work and again communicated with  
12 the City. Order-2 was personally served on the Petitioner.
- 13 9. The Petitioner went to the City to discuss Order-2. As a result of this communication, on  
14 September 21, 2020, the City called for an inspection of the sheeting and reported to the  
15 Petitioner that an appointment was scheduled for an inspection for the next morning.
- 16 10. The City inspector, Konrad, ("Inspector") drove by the property on the afternoon of September  
17 21, 2020. He got out of his car and took two photographs with his phone. The Inspector arrived  
18 without COVID-19 safety protocols nor did the Inspector bring a ladder for the inspection.  
19 During the inspection, the Inspector was verbally aggressive towards the Petitioner. The  
20 Inspector threatened her with incarceration and demanded she tear off the shingles on the portion  
21 of the roof that was installed prior to Order-2. The Inspector provided no written report, or  
22 written guidance, to the Petitioner at anytime after his inspection.
- 23 11. While the first and second stop work orders were issued, the City of Vader Mayor, Mr. Joe  
24 Schey, ("Mayor") contacted the State of Washington Labor and Industries to initiate an  
25  
26

1 investigation about the Petitioner's property pertaining to unrelated electrical matters. Based  
2 on the State's inspection, no issues were found and all permits were proper.

3 12. During the same time period, the Mayor then contacted the State of Washington Labor and  
4 Industries to initiate an investigation regarding the Petitioner's roofing material that was  
5 removed from the roof during the project but still on site. The State of Washington inspected  
6 the project and tested the roofing material for asbestos. Based on the State's inspection and the  
7 testing results of the roofing materials, no issues were present on the property.

8 13. The Petitioner paid for all inspections requested by the City and all tests requested by the State.

9 14. On September 24, 2020, the first and second stop work orders were retracted by the City.

10 15. A third Stop Work Order ("Order"), the subject of the appeal, was posted on the site on  
11 September 24, 2020 for the same subject matter. The Order was not served on the Petitioner.

12 16. The Petitioner attempted to work with the City to understand and comply with the Order but no  
13 deadline for remedial action was identified on the Order and the appeal period expired within 7  
14 days.

15 17. The Petitioner filed an appeal of the Order on October 1, 2020. The Petitioner's appeal stated  
16 the Order was not properly issued and/or a violation did not occur.

17 18. The City's appeal fee based on Ordinance 21-2017, and the 2020 Municipal Fees posted on the  
18 City's website, identified the appeal fee as \$250.00.

19 19. The City charged the Petitioner \$500.00 to file the appeal.

20 20. The City's Order allowed for two remedial actions either (i) remove the roofing materials on  
21 that portion of the roof that was covered to allow for an inspection; or (ii) provide a detailed  
22 report by a licensed structural engineer.

23 21. On October 8, 2020, after the statutory period to file the appeal expired, and while the appeal  
24 was pending, the City served the Petitioner with the Order by mail.  
25  
26

- 1 22. During pendency of the appeal, and before the hearing, the Petitioner obtained the requested  
2 detailed report from a licensed structural engineer and submitted the report to the City, and the  
3 Hearing Examiner, on November 5, 2020.
- 4 23. On November 11, 2020, during pendency of the appeal, and during the City's stay, the City  
5 served the Petitioner with a new Notice of Violation based on the alleged violations in the Order.
- 6 24. The Petitioner's appeal of the Order was based on the following categories: Failure by the City  
7 to issue the Order properly including – failure to properly serve; failure to identify referenced  
8 code provisions; failure to provide a reasonable time for compliance; failure to provide a  
9 statement of determination; failure to provide an alternate 15-day appeal period; constitutional  
10 violations; and mootness.
- 11 25. The Hearing Examiner ruled on summary judgment for the City on November 23, 2020 and  
12 mailed the determination on November 24, 2020. The Hearing examiner's ruling is attached as  
13 **Exhibit A** to this Complaint.
- 14 26. The Petitioner filed a timely Request for Reconsideration on December 1, 2020. The Hearing  
15 Examiner denied the Request for Reconsideration on December 3, 2020.  
16

17  
18 **V. ERRORS COMMITTED**

19 **A. THE LAND USE DECISION IS A CLEARLY ERRONEOUS APPLICATION OF**  
20 **THE LAW TO THE FACTS.**

21 **WAS THE STOP WORK ORDER ISSUED PROPERLY?**

22 **1) SERVICE OF PROCESS**

23 It was determined by the Hearing Examiner that the Order had to be posted on the site and  
24 personally served. The Order was posted on the site at some time but did not provide sufficient and  
25 statutory notice because it was never served on the Petitioner personally at that time, or within a  
26 reasonable time thereafter.

1 The Hearing Examiner determined the service of process was sufficient by mail because  
2 the City did provide service by mail 14 days after the Order issued and seven (7) days after the  
3 statutory appeal period expired. The Order was issued on September 24, 2020. The time to appeal,  
4 which is under a strict compliance standard, was within seven (7) days thereafter. The appeal  
5 period ended on October 1, 2020 which was the date the appeal was filed.

6 The City waited another seven (7) days after the appeal was filed to properly serve notice.  
7 This was not harmless error because the Petitioner had to pay for the appeal by this time. This was  
8 a jurisdictional challenge included in her appeal.

9 Notice that is timely is required to invoke jurisdiction in this matter. The Hearing  
10 Examiner should have dismissed the matter and refunded the Petitioner the required appeal fee  
11 because serving notice on the Petitioner a week after the statutorily required appeal period expired  
12 is insufficient notice.

13 The purpose of service of process is to provide due process and, specifically note that an  
14 action has been commenced. With the posting, withdrawals, inspections lacking reports, and the  
15 ongoing haphazard actions by the City it unclear as to the City's requirements.

16 The City had to serve notice on the Petitioner within a reasonable time but 14 days after the  
17 Order was issued, and seven (7) days after the appeal was filed, is not reasonable and not sufficient  
18 notice. The City failed to meet a standard of legal reasonableness. Because notice was  
19 insufficient, the City committed a fatal procedural error and the Order should have been dismissed.

## 20 2) VIOLATION OF CODE REQUIREMENTS FOR ISSUANCE OF ORDER.

21 Under the City's code, an appellant appealing a land use matter must strictly comply with the  
22 City's code requirements (VMC 19.010.080(f)(6)). The City's code requirements include timely  
23 filing, paying fees and inclusion of proper information within the appeal. But, in this process, the  
24

1 City failed to include specific information in the Order. The Hearing Examiner determined the  
2 information was sufficient to comply, or substantially comply, with the requirements.

3  
4 a. Under VMC 19.01.040(b)(8), the City is required to include notice of a "reasonable time  
5 for compliance" in the Order which was included. The Hearing Examiner determined that because  
6 no date was specified, it meant that the Petitioner had "*as much time as was needed*". The appeal  
7 period was only seven (7) days and thus, unless a date was identified, any appellant would believe  
8 they had only seven (7) days to try and remedy a solution to the Order.

9  
10 It wasn't until November 11, 2020 that the Petitioner was able to provide the required licensed  
11 structural engineering report to evidence there were no problems identified on her site. The  
12 Petitioner had to file an appeal for fear of retaliation and rejection of her compliance which  
13 certainly was the case here. Throughout the City's code it references the "time specified" for  
14 compliance and other matters. There is no where in the Order the time specified for compliance  
15 was provided and therefore the statutory requirement was not met and the Order was not issued  
16 properly.

17  
18 b. The City was also unable to identify the specific code violation on the Order (VMC  
19 19.01.040(b)(6)). The Hearing Examiner determined the language on the Order was sufficient to  
20 identify the violation but as shown by the Petitioner's compliance with the suggested remedy, it  
21 was not clear because the City's received and rejected her attempt for the requested remedy. If a  
22 reasonable person could not identify terms in the Order it is clearly ambiguous and does not meet  
23 the specific code to properly identify the issue.

24  
25 The City cannot provide a code because it had never, in the past, inspected the sheeting on any  
26 of the prior re roofing permits because there is no code to identify its requirement.

1 Because of the aforementioned matters, the Order was not properly issued and THE LAND  
2 USE DECISION IS CLEARLY AN ERRONEOUS APPLICATION OF THE LAW TO THE  
3 FACTS.

4  
5 B. THE LAND USE DECISION IS OUTSIDE THE AUTHORITY OR JURISDICTION  
6 OF THE BODY OR OFFICER MAKING THE DECISION & ERRONEOUS  
7 APPLICATION OF LAW TO FACTS

8 1) WAS THE STOP WORK ORDER MOOT AT THE TIME OF THE HEARING?

9 The Hearing Examiner determined the claim of mootness was outside of his jurisdiction and  
10 that he was only required to determine if the Order was issued properly and/or if a violation  
11 occurred.

12 Under the City's code, VMC 19.01.060(b)(c), compliance could have been achieved within  
13 the compliance date (see supra – compliance date was omitted) and a determination of compliance  
14 is determined by the Hearing Examiner.

15 On November 5, 2020, and 18 days prior to the hearing, the Petitioner provided the City's  
16 required remedy, a report<sup>1</sup> issued by a licensed structural engineer, to the City and the Hearing  
17 Examiner. Despite the information provided, the City then determined the licensed structural  
18 engineering report was insufficient and required additional specifications on the report from what  
19 the City originally requested in the Order.  
20  
21  
22

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23  
24  
25 <sup>1</sup>. The report submitted lacked the engineering stamp which was on the report but stripped from the email system  
26 upon receipt. A stamped report has since been provided to the City.



1 The Hearing Examiner decided that he did not have the authority to make a determination of  
2 mootness even though the City's code established the authority for the Hearing Examiner to make  
3 this determination was in fact prior to the hearing.

4 Although the Hearing Examiner deemed this matter outside of his jurisdiction, it was an  
5 erroneous application of law to the facts.  
6

7  
8 C. THE LAND USE DECISION VIOLATES THE CONSTITUTIONAL RIGHTS OF  
9 THE PARTY SEEKING RELIEF.

10 1) VIOLATION OF PROCEDURAL DUE PROCESS

11 The Due Process Clause provides that no states shall deprive a person of life, liberty or property  
12 without the due process of law.

13 During pendency of the appeal of the Order, and while the Petitioner remained unable to occupy  
14 the property where she was residing part time, the City continued to pursue the Petitioner by  
15 continuing prosecution of the Order through a new Notice of Violation issued on November 11, 2020  
16 covering the same subject matter.  
17

18 Under VMC 19.01.080(g) the effect of filing a timely appeal "*shall stay any enforcement action*  
19 *based on a stop work order, emergency order or notice of violation until the decision maker's*  
20 *decision issues unless the clerk-treasurer finds that the violation causes an immediate threat to public*  
21 *health or safety*".

22 First, the Notice of Violation was improperly issued by the Building Inspector, not the Clerk-  
23 Treasurer as required by the code. Because nevertheless, during this time, the Petitioner was told to  
24 not occupy her property for any matter, except to cover the roof with a tarp, there was no immediate  
25  
26

1 threat to anyone. The Petitioner even had to relocate to her other residence full time during this  
2 period.

3 The Notice of Violation based on the Order was served on the Petitioner during the stay and a  
4 timeline to remedy the Order was imposed effective December 1, 2020. Thereafter, the City initiated  
5 fines upon the Petitioner in the amount of \$1,000.00 per day for violation of the Order commencing  
6 December 1, 2020.

7 Under the City's code, the Petitioner did not have to request a stay, rather a stay was initiated  
8 upon the timely filing of an appeal. Here, the appeal was timely filed but the City continued to  
9 prosecute the matter before the hearing and the Hearing Examiner's determination dated November  
10 23, 2020 as well as the Hearing Examiner's reconsideration and commenced imposing monetary  
11 penalties upon the Petitioner.  
12

13 Under VMC 19.010.060(b), the City's code specified that if no appeal is filed, a notice of  
14 violation for the violation may be filed. A notice of violation is never filed by a building inspector.  
15 Rather, the building inspector filed the notice to further harass the Petitioner.

16 Here, the Petitioner filed an appeal and the City authorized continued unlawful prosecution of  
17 this matter during pendency of the appeal. A stay is meant to put the appellant in a position that it  
18 was at the time the appeal is filed. The City violated its code for a stay of enforcement and violated  
19 the Petitioner's due process by continuing to prosecute this Order during the stay.  
20

21 The City averted the requirements of the stay, and at the same time of pendency of the appeal,  
22 began imposing monetary penalties even prior to the Hearing Examiner's decision and the  
23 reconsideration period.

24 The City did not allow for due process of this matter and is now imposing unlawful fines upon  
25 the Petitioner.  
26

1 THE PETITIONER'S DUE PROCESS RIGHTS WERE VIOLATED FOR ILLEGALLY  
2 CONTINUING PROSECUTION OF THE ORDER DURING THE STAY.

3  
4 2) EQUAL PROTECTION VIOLATION

5  
6 The Fourteenth Amendment guarantees "[n]o State shall make or enforce any law which shall  
7 deny to any person within its jurisdiction the equal protection of the laws". The law provides that  
8 equal enforcement of the laws is a guarantee allowing the law itself to be challenged.

9 From commencement of the Petitioner's application for a re roofing permit she has been required  
10 to a substantially different process and substantially different fees from any other citizen seeking the  
11 same permit from the City.

12 The City demanded of the Petitioner almost four (4) times the fee amount that every permittee,  
13 up until this time, was charged. There is no reference in the City's ordinance of a change in the fee  
14 amount but rather the change was directed solely to harass the Petitioner when she arrived at the City  
15 to request a re roofing permit.

16  
17 The Petitioner was then issued a permit created specifically for her because this permit form was  
18 different from any of the prior permits issued by the City. None of the prior permittees were required  
19 to have a sheeting inspection, and the City has no record of performing any such inspection for any  
20 of the prior permittees.

21 The City also included new language in the Petitioner's permit that referenced an IRC that did  
22 not apply to what the City was trying to request (the sheeting inspection). The form change and  
23 language added to the Petitioner's permit was imposed solely to harass the Petitioner and create an  
24 ambiguous condition where the Petitioner could not comply with the reference code on the permit  
25 because it did not apply to her situation.  
26

1 In addition, the Mayor did in fact subject the Petitioner to further harassment because he  
2 intentionally made false reports to the State of Washington to inspect the Petitioner's property based  
3 on no evidence of wrongdoing. The Mayor requested the state electrical inspector inspect the  
4 Petitioner's property and the Mayor then requested Labor and Industries inspect the Petitioner's  
5 property. The result of the two state agency inspections evidenced there were no infractions on the  
6 Petitioner's property. This action by the City, and the Mayor, was conducted in bad faith and not to  
7 further any public interest. There is no legal basis, or reasonableness, to invoke state interference in  
8 this matter.  
9

10 Further, the Petitioner, upon filing her appeal based on the Order, was charged a \$500.00 appeal  
11 fee. The appeal fee amount is double the actual appeal fee, as noted in the City's ordinance 21-2017  
12 and also posted on the City's website for the appeal of the Order. Even though a demand for a refund  
13 was requested, the City rejected the request to refund the Petitioner's overpayment amount. There  
14 is no recording from any subsequent City Council Meeting that authorized a change in the appeal  
15 fee.  
16

17 Finally, it has not gone unnoticed that the City imposed, not only the requirements identified in  
18 the Order, but continual additional requirements that are simply unachievable because they continue  
19 to morph as the Petitioner continues to attempt compliance. The continual change of requirements  
20 of the Order is unreasonable when the Petitioner did in fact, comply with the specified option for a  
21 resolution.

22 In light of the prior applications and permits issued by the City, the Petitioner has been held to a  
23 wholly different standard and at a higher cost for services provided by the City. It is clear the City  
24 has continued harassment of the Petitioner and has applied its laws and standard unfairly against the  
25 Petitioner.  
26

The Petitioner's constitutional right to for equal protection under the law has been violated.

1  
2  
3  
4 **VI. REQUEST FOR STAY OF ACTION PENDING REVIEW**

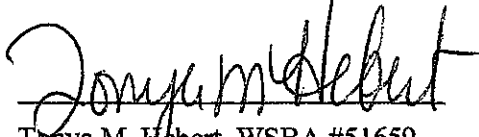
5 The Petitioner requests the Court impose a stay of action because it is likely the Petitioner will  
6 prevail on the merits. Without a stay the Petitioner will suffer irreparable harm because the Petitioner  
7 is now being improperly fined \$1,000.00 per day. Because there are no citizen complaints against  
8 the Petitioner's Property a grant of the stay will not substantially harm any party to this proceeding.  
9

10 **VII. PRAYER FOR RELIEF**

11  
12 The City's actions violate the City's own codes as well as the Constitutional Rights of the  
13 Petitioner. The Petitioner hereby requests this court:

- 14 (1) DISMISS THE ORDER;  
15 (2) DISMISS THE NOTICE OF VIOLATION AND ALL ASSOCIATED FINES  
16 AND FEES ASSESSED AGAINST THE PETITIONER'S PROPERTY;  
17 (3) FIND THE PETITIONER'S CONSTITUTIONAL RIGHTS WERE  
18 VIOLATED BY THE CITY OF VADER;  
19 (4) ALLOW DAMAGES TO THE PETITIONER; AND  
20 (5) ALLOW LEGAL FEES AND COSTS.

21 DATED THIS 14<sup>TH</sup> DAY OF DECEMBER, 2020

22 

23 Tonya M. Hebert, WSBA #51659  
24 Attorney for Petitioner, Judi Costello  
25 411 NE First Street, P.O. Box 69  
26 Winlock, Washington 98596  
Phone: 360-785-3333  
Email: [Tonya@winlocklaw.com](mailto:Tonya@winlocklaw.com)

VERIFICATION

The undersigned, under penalty of perjury under the laws of the State of Washington, states that she is the Petitioner named herein; that she has read the foregoing Complaint and that the foregoing Complaint is true and correct.

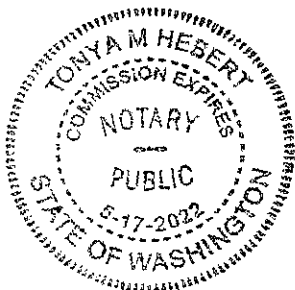
I DECLARE UNDER PENALTY OF PERJURY UNDR THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED THIS 14 day of December, 2020 at Winlock, Washington.

*Judi Costello*

Judi Costello

SUBSCRIBED AND SWORN TO before me this 14<sup>th</sup> day of December, 2020



*Tonya M. Hebert*

NOTARY PUBLIC in and for the State  
of Washington, residing in Lewis County,  
My commission expires on 5-17-2022

EXHIBIT A

## VADER HEARING EXAMINER

299 N.W. CENTER STREET  
P.O. BOX 939  
CHEHALIS, WASHINGTON 98532  
PHONE: (360) 748-3386  
FAX: (360) 748-3387

November 24, 2020

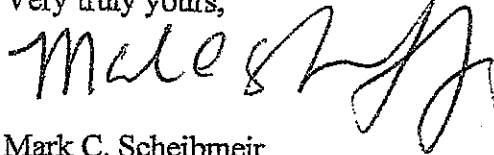
Ms. Tonya Hebert  
Law Office of Tonya Hebert, PLLC  
P. O. Box 69  
Winlock, Washington 98596

Re: Judy Costello - Appeal of Stop Work Order

Dear Ms. Hebert:

Enclosed herewith please find a copy of the Order Granting City of Vader's Motion for Summary Judgment and Dismissing Appeal.

Very truly yours,



Mark C. Scheibmeir  
Vader Hearing Examiner

MCS:kif  
Encl.

## BEFORE THE CITY OF VADER HEARINGS EXAMINER

IN RE:

HEARING NO. 2020-01

JUDY COSTELLO,

ORDER GRANTING CITY OF  
VADER'S MOTION FOR  
SUMMARY JUDGMENT AND  
DISMISSING APPEAL

Appellant.

**THIS MATTER** comes before the City of Vader Hearing Examiner upon the appeal brought by Judy Costello with respect to that certain Stop Work Order issued by the City on September 24, 2020, relating to Ms. Costello's roofing project at 706 B Street, Vader, Washington.

Ms. Costello appears through Tonya Hebert. The City appears through its City Attorney, Jennifer Robertson.

Pursuant to an earlier Pre-Hearing Order the matter was scheduled for hearing on Thursday, November 19, 2020. In advance, both parties were provided a schedule for their list of witnesses and exhibits as well as briefing, with any dispositive motions to be argued at the time of the hearing. Both parties timely filed lists of witnesses and exhibits, submitted briefing, and presented Cross-Motions for Summary Judgment.

The hearing commenced at 9:00 a.m. on November 19, 2020. Due to the ongoing Covid-19 pandemic the hearing was conducted remotely utilizing the Go To Meeting platform supplemented by telephonic access for any party unable to access Go To Meeting. Both parties were present along with their counsel and expected witnesses.

At the commencement of the hearing the Hearing Examiner announced that there were no apparent material facts in dispute and that the matter could be resolved by a ruling on the parties' Cross-Motions for Summary Judgment.

*Order Granting City of  
Vader's Motion for Summary  
Judgment and Dismissing  
Appeal - 1*

**CITY OF VADER HEARING EXAMINER**  
299 N.W. CENTER ST. / P.O. BOX 939  
CHEHALIS, WASHINGTON 98532  
Phone: 360-748-3386/Fax: 748-3387



1 The following pleadings were considered:

- 2 1. Ms. Costello's Notice of Appeal dated October 1.
- 3 2. City Staff Report with enclosures.
- 4 3. Ms. Costello's Pre-Hearing Brief.
- 5 4. Ms. Costello's Motion and Declaration for Summary Judgment.
- 6 5. City's Pre-Hearing Brief including Motions in Limine, Motions to Strike  
7 and Cross-Motion for Summary Judgment.
- 8 6. Declaration of Deputy City Clerk Stephanie Pelton with Exhibits.
- 9 7. Declaration of Jennifer Robertson with Exhibits.
- 10 8. City's Witness List.
- 11 9. Ms. Costello's Reply to City's Pre-Hearing Brief.
- 12 10. Declaration of Cindy Radcliffe.

14 The Hearing Examiner having considered these documents, and having heard the final  
15 arguments of counsel, hereby **GRANTS** the City's Motion for Summary Judgment and  
16 **DISMISSES** Ms. Costello's Petition for Appeal.

17 For the benefit of the parties, the following are the undisputed facts and resulting  
18 Conclusions of Law upon which this Decision is based.

20 **UNDISPUTED FACTS**

21 • Ms. Costello applies to the City for a Roofing Permit to tear off the existing roof  
22 at the residence located at 706 B Street, Vader, and re-roof the residence with a three tab  
23 composition roof.

24 • On June 3, 2020, Stephanie Montgomery (now Stephanie Pelton) from the City  
25 Clerk's Office sends a letter to Ms. Costello notifying her of additional conditions needing to be

*Order Granting City of  
Vader's Motion for Summary  
Judgment and Dismissing  
Appeal - 2*

**CITY OF VADER HEARING EXAMINER**  
299 N.W. CENTER ST. / P.O. BOX 939  
CHEHALIS, WASHINGTON 98532  
Phone: 360-748-3386/Fax: 748-3387

1 addressed in order to process the permit application. The attachment to her letter makes clear  
2 that the property will require a roofing sheeting inspection.

3       • The City issues the requested Roofing Permit, Building Permit No. VAD-20-13,  
4 on June 29, 2020. Page 2 of the Permit identifies all necessary inspections. It requires a roofing  
5 sheeting inspection and a final roofing inspection.

6       • Ms. Costello subsequently begins removal of the existing roof and its replacement  
7 with a new roof. Installation of the new roof begins without having first undergone a roofing  
8 sheeting inspection.

9       • Upon learning that the new roof was being installed prior to a sheeting inspection,  
10 the City issued a Stop Work Order on September 24, 2020. The Stop Work Order notifies Ms.  
11 Costello that it is being issued as a result of there being no sheeting inspection. It allows her the  
12 options of either removing the new roofing to examine the sheeting, or have a Washington State  
13 Licensed Structural Engineer inspect the work and submit a detailed report that assures code  
14 compliance. A copy of the Stop Work Order was posted onsite on September 24 and also  
15 emailed to Ms. Costello's counsel, Ms. Hebert, on the same date. A copy of the Order was  
16 served upon Ms. Costello by mail on October 8, 2020.

### 18                   **ISSUE BEFORE THE HEARING EXAMINER**

19       The parties are in agreement that the issue before the Hearing Examiner is: "Whether the  
20 Stop Work Order was correctly issued and/or whether a violation occurred". VMC 19.01.080(b).  
21

### 22                   **CONCLUSIONS OF LAW**

#### 23                   **Conclusions Relating to Whether a Violation Occurred.**

24       1. The Roofing Permit expressly requires a sheeting inspection prior to the  
25 installation of new roofing material.

1           2.       When the Roofing Permit stated "roofing sheeting inspection (2015 IRC  
2 R908.3.1.1.), the reference to the IRC was simply explaining the City's authority for requiring  
3 the sheeting inspection. This reference did not create any ambiguity or give the permit holder  
4 the right to decide unilaterally whether an inspection was needed.

5           3.       The Appellant did not appeal the terms of the Roofing Permit. Its requirements  
6 became fixed and cannot now be challenged.

7           4.       The Appellant's failure to obtain a sheeting inspection prior to re-roofing was a  
8 clear violation of the Permit conditions.

9  
10           Conclusions Relating to Whether the Stop Work Order was Correctly Issued.

11           This issue has two sub-issues:

- 12           •       Was the Stop Work Order properly served?  
13           •       Was the Stop Work Order in proper format?

14           Was the Stop Work Order Properly Served?

15           4.       VMC 19.01.040(d) allows for service of the Order by various means including  
16 mailing a copy by first class mail, postage prepaid, to the party to be served at her usual mailing  
17 address, as set forth in RCW 4.28.080(15).

18           5.       The Appellant argues that this form of service only applies to situations involving  
19 parties to a real estate purchase and sale agreement. This is clearly not the City's intent nor can  
20 this conclusion be reached from a plain reading of the City's ordinance. The City's ordinance  
21 clearly allows service by mail *in the manner* described in RCW 4.28.080(15).

22           6.       On October 8, 2020, the Appellant was served by mail in the manner prescribed  
23 by RCW 4.28.080(15).  
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7. As a copy of the Notice was posted onsite on September 24, and service by mail was effected on October 8, all requirements for service upon the Appellant were properly accomplished on or before October 8, 2020.

Was the Stop Work Order in the Proper Form?

8. Pursuant to VMC 19.01.060(b): "The Stop Work Order shall include the information required for a Notice of Violation" in addition to other information described in VMC 19.01.060(b).

9. The required information for a Notice of Violation is set forth in VMC 19.01.040(b). There are eleven identified requirements for a Notice of Violation: VMC 19.01.040(b)(1) through (11).

10. The Appellant argues that the Notice to Stop Work does not comply with VMC 19.01.040(b)(6) which requires "a specific identification of each standard, code provision, or requirement violated". The Appellant argues that the Notice must cite to a "code provision". The Hearing Examiner disagrees. The City is required to give notice of either the standard, code provision *or* requirement violated. The Notice to Stop Work correctly and adequately notified the Appellant *of the requirement* that had been violated, to-wit, the failure to have a roofing sheeting inspection.

11. The Appellant argues that the Notice to Stop Work violates VMC 19.01.040(b)(8) requiring notice of "a reasonable time for compliance". The Hearing Examiner disagrees. The Appellant was given as much time as was needed to comply, with the only constraint on Appellant being that no other work could be done until Appellant did comply. The Appellant was therefore granted a reasonable time for compliance.

1           12.     The Appellant argues that the Notice violated VMC 1901.040(b)(11) requiring "a  
2 statement that the Notice of Violation represents a determination that a violation has been  
3 committed by the person named in the Notice of Violation . . . ." The Hearing Examiner  
4 disagrees. The Notice to Stop Work represents a determination that a violation has been  
5 committed by the Appellant, and that the determination is final unless appealed.

6           13.     The Appellant further argues that the Stop Work Order is in violation of VMC  
7 19.01.040(b)(11) for having failed to give notice that any "appeal must be timely filed under the  
8 procedures set forth in Section 19.01.070 (within 15 calendar days of service of the Notice of  
9 Violation)." The Hearing Examiner agrees that this additional notice was not included, but the  
10 Appellant had been notified of the right to file an appeal and request an expedited hearing within  
11 7 days of service per VMC 19.01.060(b). The Appellant responded within the 7 days allowed  
12 under this other provision. Thus, the failure to give additional notice of the lengthier appeal  
13 period (that is 15 days rather than 7 days) had no impact as an appeal was timely filed under  
14 either requirement. Any error was therefore harmless.

15           14.     The Notice of Stop Work complies with, or substantially complies with, all  
16 requirements of VMC 19.01.060 and 19.01.040(b).

17           15.     The Stop Work Order was correctly issued.

18           General Conclusions.

19           16.     The City has met its burden of proving that a violation occurred and that the  
20 Notice to Stop Work was correctly issued. The Appellant's appeal should therefore be denied.

21           OTHER ISSUES

22           In her Notice of Appeal and/or her Motion for Summary Judgment, the Appellant raises  
23 two additional challenges:

24           Order Granting City of  
25           Vader's Motion for Summary  
            Judgment and Dismissing  
            Appeal - 6

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1 DATED this 23 day of November, 2020.

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4 Mark C. Scheibmeir  
City of Vader Hearing Examiner  
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*Order Granting City of  
Vader's Motion for Summary  
Judgment and Dismissing  
Appeal - 8*

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